

Brendan Sherman

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JFS HOLDINGS, INC., )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No.  
 ) 05-709-SLR  
ABESSINIO PROPERTY MANAGEMENT, )  
INC., )  
 )  
Defendant. )

Deposition of BRENDAN SHERMAN taken pursuant to  
notice before Renee A. Meyers, Registered Professional  
Reporter and Notary Public, in the law offices of The  
Matluskys Firm, LLC, 1423 North Harrison Street,  
Wilmington, Delaware, on Tuesday, May 30, 2006, beginning  
at approximately 10:42 a.m., there being present:

APPEARANCES:

THE MATLUSKY FIRM, LLC  
DAVID E. MATLUSKY, ESQ.  
TARA M. DIROCCO, ESQ.  
1423 North Harrison Street  
Wilmington, Delaware 19806  
for Defendant

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2 (Pages 2 to 5)

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<p>1 BRENDAN SHERMAN,  2 the witness herein, having first been  3 duly sworn on oath, was examined and  4 testified as follows:  5 BY MR. MATLUSKY:  6 Q. Mr. Sherman, I am David Matlusk. I am the  7 attorney for Abbesinio Property Management and  8 Dr. Abbesinio. This is Tara Dirocco. She is an  9 associate in the office.  10 Prior to getting into the actual  11 deposition, asking you questions, a few housekeeping  12 matters. I am just going to go through a litany of  13 reminders. I am going to ask you a few questions to find  14 out what you know about the facts. If you do not hear a  15 question, say so and I will repeat it. If you do not  16 understand a question, say so and I will rephrase it. If  17 you realize that an earlier answer was incomplete or  18 incorrect, just stop me and we will supplement the answer  19 and correct it. If you need to stop to use the rest room  20 or get a soda or a drink, just let me know and you are  21 permitted to do so.  22 If you do not know or remember  23 information, just say so. If you answer a question, I  24 will assume that you have heard it, understood it, and</p>	<p>1 Biden &amp; Balick.  2 BY MR. MATLUSKY:  3 Q. And Balick.  4 Do you acknowledge, at this point, you  5 are waiving the presence of local counsel?  6 A. Yes.  7 Q. And you desire to proceed with the deposition?  8 A. That's correct. Yes.  9 Q. The underlying business was a Laundromat; is  10 that correct?  11 A. That is correct.  12 Q. And it was for sale?  13 A. Yes.  14 Q. How did you advertise the business for sale?  15 A. The business was put up with a brokerage  16 company called the Ellsher Group. They advertise on a  17 website looking for buyers, describing the assets, and  18 waiting for buyers to contact the Ellsher Group.  19 Q. Who, exactly, is the Ellsher Group?  20 A. The Ellsher Group is a company that I founded  21 approximately three years ago. It's a business brokerage  22 firm specializing in the sale of Laundromats.  23 Q. Now, you say you founded that about three  24 years ago?</p>
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<p>1 have given the answer to the best of your recollection.  2 A reminder to answer all questions verbally, not to use  3 any hand motions or a nod of the head since we do have  4 the stenographer that is listening to answers as opposed  5 to watching for them.  6 Are you on any medication that may  7 affect your recollection or decisions today?  8 A. No.  9 Q. That's it. We can begin.  10 For the record, can you state your name?  11 A. Brendan Sherman.  12 Q. And how are you involved in this particular  13 lawsuit?  14 A. I am the president of JFS Holdings, which is  15 the plaintiff that filed the suit.  16 Q. And are you acting as JFS Holdings counsel or  17 attorney in this matter?  18 A. Correct, I am.  19 Q. For the record, I would also like to clarify  20 that local counsel that's been retained on behalf of JFS  21 Holdings, Inc., is the law firm of Bifferato, Biden,  22 Gentilotti --  23 A. That's good enough.  24 MS. DIROCCO: Bifferato, Gentilotti,</p>	<p>1 A. That's correct.  2 Q. Are you the owner of the business?  3 A. It's a corporation. It's a Pennsylvania S  4 Corporation. I am an officer and a shareholder.  5 Q. Are you the sole shareholder of that entity?  6 A. Yes.  7 Q. And it is a Pennsylvania corporation?  8 A. Yes.  9 Q. JFS Holdings, Inc., are they the owners of the  10 Laundromat?  11 A. That's correct.  12 Q. And is JFS Holdings, Inc., is a Pennsylvania  13 corporation?  14 A. That's correct.  15 Q. And are you the sole shareholder of that?  16 A. No. My wife and I own the shares in that  17 entity as tenants by the entireties.  18 Q. And who manages that particular entity?  19 A. I do.  20 Q. Do you run the day-to-day operation?  21 A. No. We have, as of right now, we have -- JFS  22 employs three people who run the day-to-day operations.  23 Q. Where are they employed out of? What state?  24 A. They are employed at the stores in Delaware.</p>

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<p>1 Q. All the stores are in Delaware?</p> <p>2 A. Those two stores, yes.</p> <p>3 Q. So, JFS Holdings, Inc., is made up of you and</p> <p>4 your spouse; it's a Pennsylvania corporation; is that</p> <p>5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And their underlying assets are Laundromats?</p> <p>8 A. That's correct.</p> <p>9 Q. Do they have any other assets?</p> <p>10 A. No.</p> <p>11 Q. Do they manage any other assets?</p> <p>12 A. No. JFS Holdings has two Laundromats, it's</p> <p>13 sole assets. One is at 1952 Maryland Avenue in</p> <p>14 Wilmington, Delaware. The second, obviously, is the</p> <p>15 Basin Plaza Shopping Center, which is the subject of the</p> <p>16 complaint.</p> <p>17 Q. The subject of the complaint is the Asset</p> <p>18 Purchase Agreement; is that correct?</p> <p>19 A. That's the basis, yes.</p> <p>20 Q. Who prepared that Asset Purchase Agreement?</p> <p>21 A. I did.</p> <p>22 Q. The subject matter is selling the Laundromat</p> <p>23 to an individual?</p> <p>24 A. That's not correct, sir.</p>	<p>1 showing up, where was closing supposed to be?</p> <p>2 A. To be held at the store, September 1st, at the</p> <p>3 store.</p> <p>4 Q. The Basin Road Shopping Center?</p> <p>5 A. That's correct.</p> <p>6 Q. Do you know if Summer State, LLC, was going to</p> <p>7 have an attorney present at the closing?</p> <p>8 A. I have absolutely no idea.</p> <p>9 Q. Were you going to be present at the closing?</p> <p>10 A. Sure.</p> <p>11 Q. Personally?</p> <p>12 A. Absolutely.</p> <p>13 Q. Were you anticipating having any counsel</p> <p>14 present at the closing to represent JFS Holdings, Inc.?</p> <p>15 A. No. It's not necessary. This is a very</p> <p>16 rudimentary sale. They are typically -- Laundromats are</p> <p>17 traded at the premises at each location by the owner and</p> <p>18 the buyer.</p> <p>19 Q. So, you were just going to show up, sign some</p> <p>20 paperwork, transfer the funds?</p> <p>21 A. Well, if you read through the Asset Purchase</p> <p>22 Agreement, the only thing that the owner would need to</p> <p>23 provide at closing would be a bill of sale, and the</p> <p>24 seller, in turn -- I am sorry, the owner -- the buyer, in</p>
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<p>1 Q. Please correct me.</p> <p>2 A. It's being sold -- it was to be sold to, I</p> <p>3 believe, Summer State, LLC.</p> <p>4 Q. And who was the underlying principal of Summer</p> <p>5 State, LLC?</p> <p>6 A. I believe the principal's name was Roscann</p> <p>7 Sestito.</p> <p>8 Q. And when did you anticipate selling the</p> <p>9 business to Summer State, LLC?</p> <p>10 A. September 1st, '05.</p> <p>11 Q. Prior to that, do you know if Summer State,</p> <p>12 LLC was a valid LLC?</p> <p>13 A. I know nothing about Summer State, LLC. I</p> <p>14 don't know when it was formed. I believe that</p> <p>15 Miss Sestito was the sole shareholder, at least that's</p> <p>16 what she represented.</p> <p>17 Q. So, as far as entering into an Asset Purchase</p> <p>18 Agreement, did you do any due diligence to determine if</p> <p>19 it was a valid LLC formed in the state of Delaware?</p> <p>20 A. No. I couldn't care less. As long as she</p> <p>21 wanted to put the business in the name of Summer State,</p> <p>22 LLC and came to closing with the funds necessary to</p> <p>23 purchase the business, it was of no consequence to us.</p> <p>24 Q. Getting to the issue of coming to closing and</p>	<p>1 turn, would come up with the balance of the funds that</p> <p>2 would comprise the sale.</p> <p>3 Q. "The balance" being what's left over after a</p> <p>4 deposit and the difference being the purchase price?</p> <p>5 A. That's correct.</p> <p>6 Q. And the purchase price being \$140,000?</p> <p>7 A. That's correct.</p> <p>8 Q. And Summer State, LLC or Miss Sestito provided</p> <p>9 you a deposit at the signing of the Asset Purchase</p> <p>10 Agreement?</p> <p>11 A. That is correct.</p> <p>12 Q. And was that deposit \$14,000?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you recall who actually gave you that</p> <p>15 deposit? Was it drawn on a personal checking account or</p> <p>16 an entity account as in Summer State, LLC?</p> <p>17 A. That, I do not recall.</p> <p>18 Q. Did you deposit the check?</p> <p>19 A. That was deposited in the Ellsher Group escrow</p> <p>20 account to be held, obviously, pending closing.</p> <p>21 Q. And was that deposit returned?</p> <p>22 A. It was.</p> <p>23 Q. When was it returned?</p> <p>24 A. Sometime after the 1st of September when Miss</p>

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4 (Pages 10 to 13)

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1 Sestito issued a letter stating that she was no longer  
 2 willing to close since we did not get the landlord to  
 3 consent.  
 4 Q. Did Miss Sestito inform you of any other  
 5 reason why she did not want to close?  
 6 A. That was the basis of not closing.  
 7 Q. The Ellsher Group, Inc., when Miss Sestito or  
 8 Summer State, LLC had dealings with purchasing this  
 9 underlying asset, being the Laundromat, was she aware  
 10 that the Ellsher Group was acting as an intermediary or  
 11 as a broker?  
 12 A. Oh, absolutely.  
 13 Q. And was she aware that JFS Holdings, Inc.,  
 14 actually owned the asset?  
 15 A. Of course she would because she would have  
 16 read the Asset Purchase Agreement, which was between JFS  
 17 Holdings and Summer State.  
 18 Q. Was she aware at any time during your  
 19 negotiation, prior to executing the Asset Purchase  
 20 Agreement, that you were an owner, a stockholder, or  
 21 founder involved in both the JFS Holdings and Ellsher?  
 22 A. She knew that I had a -- I had disclosed to  
 23 her that I had a personal interest in that Laundromat in  
 24 that I had a personal stake that I was a part owner in

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1 JFS.  
 2 Q. When did you disclose that to her?  
 3 A. Sometime right around when we signed the Asset  
 4 Purchase Agreement.  
 5 Q. What was her reaction to that?  
 6 A. There was no reaction. She knew at that time.  
 7 She was very concerned as to who was going to train her  
 8 to do repairs and how to work on this equipment, and I  
 9 told her that I would be doing it personally for the two  
 10 weeks, as we had agreed upon, post closing.  
 11 Q. Did you advise her, inform her that you were  
 12 involved or had a personal stake verbally or was it in  
 13 writing?  
 14 A. Verbally.  
 15 Q. How long would you say your dealings or your  
 16 negotiations were prior to entering into the Asset  
 17 Purchase Agreement dated August 1st?  
 18 A. A couple of weeks.  
 19 Q. And do you know how she actually found the  
 20 business for sale? Was it through the web solicitation?  
 21 A. That's correct.  
 22 Q. And when was her first contact with you?  
 23 A. Probably somewhere in the latter half of June  
 24 or early July.

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1 Q. Of 2005?  
 2 A. That's correct.  
 3 Q. As to the solicitation or the business for  
 4 sale, who was the contact at the Ellsher Group, Inc.,  
 5 for --  
 6 A. That was me.  
 7 Q. So, you were the contact person?  
 8 A. That's correct.  
 9 Q. So she knew to contact you and you were  
 10 discussing all the logistics and the parameters of the  
 11 purchase?  
 12 A. I explained to her how it worked. I explained  
 13 to her how the business worked. I explained to her what  
 14 would be needed in order to purchase the business. I  
 15 explained to her that an Asset Purchase Agreement would  
 16 need to be executed. She would call me from time to time  
 17 to talk about the best ways, you know, for her to own the  
 18 business, etcetera, in my opinion, and I tried to help  
 19 her where I could.  
 20 Q. What documentation did you provide her for her  
 21 to do her due diligence to purchase the business?  
 22 A. The owner would never provide any  
 23 documentation to do due diligence. It would be upon the  
 24 perspective purchaser to do their due diligence.

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1 Q. How about as far as determining the purchase  
 2 price, did you provide her any profit/loss statements,  
 3 balance sheets?  
 4 A. I believe I gave her an income statement and  
 5 the utility bills.  
 6 Q. Did she ask you for anything else?  
 7 A. Not to my recollection, no.  
 8 Q. So, you entered into an Asset Purchase  
 9 Agreement October 1st, 2005?  
 10 A. That's correct.  
 11 Q. Between October 1st --  
 12 A. Wait a minute. That's not correct. What's  
 13 the date on that?  
 14 Q. August 1st, 2005.  
 15 A. You keep saying "October."  
 16 Q. Excuse me --  
 17 A. You just said "October," for the record, and  
 18 that's why -- I know that wasn't correct.  
 19 Q. Between August 1st and September 1st, what  
 20 dealings or documents were provided by Miss Sestito to  
 21 you?  
 22 A. What documents were provided by Miss Sestito  
 23 to myself? I don't recall receiving anything from her  
 24 but for the deposit?

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<p style="text-align: right;">Page 14</p> <p>1 Q. So just a check?</p> <p>2 A. Yeah. Once the deposit comes in, in this</p> <p>3 business, you know these people are for real. Typically,</p> <p>4 they either don't come up with the money and you know</p> <p>5 that they don't have the ability to close the</p> <p>6 transaction, or they come up with it and you schedule</p> <p>7 closing so you know in such a short time after you</p> <p>8 receive the down payment that you are not wasting any</p> <p>9 time.</p> <p>10 Q. How did you know she had financing or was</p> <p>11 going to come up with the deposit?</p> <p>12 A. She told me.</p> <p>13 Q. So you were moving along for a September 1st</p> <p>14 settlement date?</p> <p>15 A. Sure.</p> <p>16 Q. Part of the Asset Purchase Agreement,</p> <p>17 specifically on page 5, paragraph 13, here is a paragraph</p> <p>18 that's captioned "Contingencies." Are you aware of that</p> <p>19 particular paragraph?</p> <p>20 A. I will tell you what, it would be really good</p> <p>21 if you could provide me a copy of that and we could both</p> <p>22 look off it together so I am not sort of guessing as to</p> <p>23 what you are looking at because I haven't reviewed that</p> <p>24 document in a year. Do you have a copy for me to look</p>	<p style="text-align: right;">Page 16</p> <p>1 you were involved in attempting to sell the asset?</p> <p>2 A. The latter half of August.</p> <p>3 Q. Would you say after August 15th?</p> <p>4 A. I'd be guessing, but that sounds about right.</p> <p>5 Q. But sometime after August 15 and obviously</p> <p>6 before the tentative closing date?</p> <p>7 A. Yeah. I think if you look at our answers to</p> <p>8 your interrogatories, there is a date on correspondence</p> <p>9 which makes up and comprises the exhibits to the</p> <p>10 complaint, and I think that there was a date that we were</p> <p>11 able to back into which was sometime between August 15th,</p> <p>12 if memory serves, and August 21st, or something like</p> <p>13 that.</p> <p>14 Q. So, at the open end of the envelope, the</p> <p>15 landlord had about two weeks' notice?</p> <p>16 A. Yes.</p> <p>17 Q. Of the tentative closing date?</p> <p>18 A. I think that's correct.</p> <p>19 Q. And you provided a copy of an application</p> <p>20 which was filled out and prepared by Miss Sestito?</p> <p>21 A. No. Your client provided it to me. I then</p> <p>22 forwarded it to Miss Sestito, who filled it out, and I</p> <p>23 forwarded it back to your client.</p> <p>24 Q. And that was done after the August 15, 2005,</p>
<p style="text-align: right;">Page 15</p> <p>1 at?</p> <p>2 Q. Yes. For the record, I am going to provide</p> <p>3 Mr. Sherman a copy of the Asset Purchase Agreement.</p> <p>4 A. Thank you.</p> <p>5 Q. Which also, for the record, this was the same</p> <p>6 Asset Purchase Agreement which was attached to the</p> <p>7 initial complaint.</p> <p>8 A. That's correct. Okay. Your question, sir?</p> <p>9 Q. Paragraph 13, "Contingencies," specifically A,</p> <p>10 can you just read that for the record?</p> <p>11 A. "The seller's assignment of the Real Estate</p> <p>12 lease for the business to the purchaser without any</p> <p>13 modifications in the term of the lease whatsoever".</p> <p>14 Q. Did you prepare an assignment of the lease for</p> <p>15 Miss Sestito or her underlying entity, Summer State, LLC?</p> <p>16 A. No. We never got that far.</p> <p>17 Q. Why didn't you?</p> <p>18 A. Because your client refused to give his</p> <p>19 consent to the assignment so we weren't going to waste</p> <p>20 our time in drafting an assignment for a lease that he</p> <p>21 refused to sign.</p> <p>22 Q. So, settlement date was scheduled for</p> <p>23 September 1st. When did my client, Abessinio Property</p> <p>24 Management, Inc., or Dr. Abbesinio, receive notice that</p>	<p style="text-align: right;">Page 17</p> <p>1 and before closing?</p> <p>2 A. What had happened was I personally contacted</p> <p>3 your client.</p> <p>4 Q. Do you remember when you contacted him?</p> <p>5 A. Within the time frame we are talking about. I</p> <p>6 advised him of the fact that there is a pending sale,</p> <p>7 which, obviously, would be contingent upon receiving his</p> <p>8 consent to an assignment of the lease. He, in turn, said</p> <p>9 that he would be providing -- things that he would</p> <p>10 require or he would need to have an application filled</p> <p>11 out. He asked me for my fax number. I provided it to</p> <p>12 him. And he provided me that application that afternoon,</p> <p>13 which I, in turn, faxed over to Miss Sestito.</p> <p>14 Q. Did the landlord request a copy of your</p> <p>15 underlying Asset Purchase Agreement or any other</p> <p>16 financials which were provided as part of the Asset</p> <p>17 Purchase Agreement?</p> <p>18 A. No. The application that we are referring to,</p> <p>19 unfortunately, it's not part of the record here, but that</p> <p>20 application was what your client wanted, apparently, and</p> <p>21 the basis of having that application was for him to run a</p> <p>22 credit check on Miss Sestito.</p> <p>23 Q. Do you know if a credit check was actually</p> <p>24 ran?</p>

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1 A. It was. Do you have a copy we can take a look  
2 at?  
3 Q. No.  
4 A. Because your client has advised me that it  
5 came back stellar.  
6 Q. As to the paragraph 13, contingency A, it  
7 doesn't mention anywhere in there that the landlord shall  
8 approve an assignment. It just says that the seller  
9 shall assign his lease.  
10 A. No. Let's be very clear so that we clear up  
11 the record. Let me read 13 A in its entirety. "Seller  
12 and purchaser's obligations to proceed to settlement  
13 hereunder is contingent upon the following: The seller's  
14 assignment of the Real Estate lease for the business to  
15 the purchaser without any modifications in the terms of  
16 the lease whatsoever."  
17 Q. That's correct. That paragraph calls for the  
18 responsibility of the seller assigning the Real Estate  
19 lease?  
20 A. No. That paragraph puts the onus on the  
21 seller to get the landlord to assign the lease to the  
22 purchaser.  
23 Q. So --  
24 A. That is a standard clause -- by the way, just

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1 A. That's correct.  
2 Q. Part of the agreement of sale, which I had  
3 forwarded over to you, are also --  
4 A. Can I just clear up the record?  
5 Q. Sure.  
6 A. Are you referring to the Asset Purchase  
7 Agreement as the agreement of sale?  
8 Q. Asset Purchase Agreement is also the agreement  
9 of sale or the contract.  
10 A. That's correct.  
11 Q. Are you familiar with -- and I can provide you  
12 a copy if you need your recollection refreshed -- a  
13 letter dated September 1st, 2005, from Roseann Sestito?  
14 A. Here is what I am going to do: I am going to  
15 request that you provide me a copy of every document for  
16 which you are referring to so that I can look at it, tell  
17 you if I recognize it, and answer questions about it.  
18 Would that be fair?  
19 Q. That's perfectly fair. For the record, this  
20 was a document which was not provided by the plaintiff  
21 pursuant to a request for discovery.  
22 (Discussion off the record.)  
23 BY MR. MATLUSKY:  
24 Q. Mr. Sherman, I just presented to you a

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1 so you know, this Asset Purchase Agreement was not custom  
2 made for this sale. It is used in every laundry sale  
3 that the Ellsher Group does.  
4 Q. So, this particular contingency, your reading  
5 of it is that the seller's assignment of the Real Estate  
6 for the lease for the business to purchase without any  
7 modification of the terms of the lease whatsoever, is  
8 also contingent on the landlord approving the particular  
9 assignment?  
10 A. It has nothing to do with the seller assigning  
11 the lease because, obviously, the seller can't assign a  
12 lease without the landlord. This paragraph clearly means  
13 that the seller's obligation is to get the landlord to  
14 agree to the assignment of the lease to the purchaser.  
15 Q. So, it's your position that an assignment  
16 cannot be unilaterally given by a seller to a purchaser  
17 independent of the landlord?  
18 A. Without the landlord's consent. I made that  
19 very clear to Miss Sestito up front. You will see all  
20 the correspondence is consistent with getting the  
21 landlord's consent. That's what this whole thing has  
22 been about.  
23 Q. And it's your position, but for the landlord  
24 's consent, closing would have taken place?

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1 document which is labeled as Defendant's Exhibit 1. It's  
2 a fax to Brendan Sherman/Ellsher Group, Inc.  
3 Do you have that in front of you?  
4 A. I do. Okay. I have read it.  
5 Q. Have you ever seen this document before?  
6 A. I don't have any recollection of it and I do  
7 not possess it. I am not saying that I didn't receive  
8 it, but I know, for instance, that the date of this is  
9 September 1st, '05, and I believe that if you look at  
10 Exhibit G to the complaint, Miss Sestito and I were still  
11 working towards a closing past that date.  
12 Q. Okay.  
13 A. So what I am saying to you is: It may have  
14 been provided, but, clearly, based on what is, off the  
15 top of my head, Exhibit G to the complaint, this was  
16 superseded by that because that clearly acknowledges that  
17 we -- I think what may have happened is she was sending  
18 this to me to cover herself on 9/1/05, since settlement  
19 didn't occur as of that date.  
20 Q. So, as far as the comments on the fax, which  
21 is dated 9/1/05, Defendant's Exhibit 1 --  
22 A. Right.  
23 Q. -- she goes on, and this is Miss Sestito,  
24 Roseann Sestito, she addressed it Brendan. The second

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7 (Pages 22 to 25)

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<p>1 paragraph of that particular fax, it says, "I wanted to</p> <p>2 have an inspector come out to look at the business before</p> <p>3 settlement date and since the settlement date is today,</p> <p>4 there is no way an inspector can review it ahead of time.</p> <p>5 Please send me the down payment of \$14,000 less the \$40</p> <p>6 fee you paid. Thank you. Roseann Sestito."</p> <p>7 Is that an accurate reading of the</p> <p>8 paragraph two?</p> <p>9 A. That's correct.</p> <p>10 Q. And the remainder of the fax?</p> <p>11 A. I forgot, we paid your client \$40 to have them</p> <p>12 run that credit check. I forgot about that, and you</p> <p>13 don't have a copy of the credit report that we paid for,</p> <p>14 sir?</p> <p>15 Q. I don't have a copy physically in my</p> <p>16 possession, not to say that there is not a copy of a</p> <p>17 credit report?</p> <p>18 A. You haven't seen it?</p> <p>19 Q. I don't have a copy and I believe my client is</p> <p>20 in the process of trying to find it or is providing a</p> <p>21 copy.</p> <p>22 A. I request, for the record, a copy of that</p> <p>23 credit report when you --</p> <p>24 Q. Just by way of clarification, Federal Rules,</p>	<p>1 Q. Did you offer any extension or an addendum to</p> <p>2 the Asset Purchase Agreement or the contract to extend</p> <p>3 settlement a week or two until maybe a clarification or</p> <p>4 an assignment, the issue could be resolved?</p> <p>5 A. I, obviously, told her that I was still</p> <p>6 working towards it, but by this point, by September 2nd,</p> <p>7 2005, your client had made it very clear that he was</p> <p>8 refusing to provide his consent, and I advised</p> <p>9 Miss Sestito of that.</p> <p>10 I didn't see any other way around it at</p> <p>11 that point. I said that -- I told her at that point that</p> <p>12 I understood if she wanted her money back, and she said</p> <p>13 she did. I asked her for this letter, she provided it to</p> <p>14 me, and we gave her her money back.</p> <p>15 Q. During that time, prior to September 2nd,</p> <p>16 2005, did you inform Miss Sestito that you were planning</p> <p>17 on filing a claim against Abessinio, the landlord?</p> <p>18 A. I said that may be an avenue which we need to</p> <p>19 go down in order to try to get his consent.</p> <p>20 BY MS. DIROCCO:</p> <p>21 Q. I have a question. Why, if the September 1st</p> <p>22 letter mentions the -- the reason that she doesn't want</p> <p>23 to go through with everything was because of the</p> <p>24 inspection, do you know why it was necessary for her to</p>
Page 23	Page 25
<p>1 as far as requests for particular documents or items</p> <p>2 which should be provided into evidence shall be requested</p> <p>3 by way of request for production, just by way of</p> <p>4 clarification.</p> <p>5 Now, September 2nd, 2005, you received a</p> <p>6 letter that you previously, about two or three minutes</p> <p>7 ago, mentioned that you thought it was Exhibit G.</p> <p>8 A. Thank you.</p> <p>9 Q. Coupled with the complaint, and you are</p> <p>10 correct, that is, in fact, Exhibit G, which is also</p> <p>11 labeled as Defendant's Exhibit 2, which will be made part</p> <p>12 of this transcript.</p> <p>13 Can you just reacquaint yourself with</p> <p>14 that particular letter?</p> <p>15 A. I am.</p> <p>16 Q. The crux of that letter, with your reading, is</p> <p>17 what?</p> <p>18 A. We could not get the assignment of the Real</p> <p>19 Estate, and, therefore, she did not want to extend</p> <p>20 closing any further and she wanted her money back and she</p> <p>21 was going to either look for another business to</p> <p>22 purchase, but either way, realized that she couldn't go</p> <p>23 through the closing because we couldn't get the</p> <p>24 assignment.</p>	<p>1 send a letter on September 2nd, stating a different</p> <p>2 reason?</p> <p>3 A. Well, ma'am, you have got to look at it this</p> <p>4 way: If you go back to paragraph 13 C of the Asset</p> <p>5 Purchase Agreement, that says, "The purchaser performing</p> <p>6 (within a reasonable time prior to settlement) a physical</p> <p>7 inspection of the business and receiving a satisfactory</p> <p>8 report from its agents regarding its condition."</p> <p>9 She coming to me saying, on September</p> <p>10 1st, that she had an inspector who she wanted to look at</p> <p>11 the property as of the date of closing, was not within a</p> <p>12 reasonable time, she had a month to do so, and that would</p> <p>13 not have been able to get her money back. We worked</p> <p>14 beyond the closing on September 1st because we were both</p> <p>15 waiting for the landlord to give his consent.</p> <p>16 As you can see, the letters that I am</p> <p>17 sending to your client work right up to the date of</p> <p>18 closing, every day, asking, Can't you give your consent?</p> <p>19 Here is what she is willing to do? Miss Sestito upped</p> <p>20 her offer each and every day going up to closing. It</p> <p>21 started with an assignment of a lease. What.</p> <p>22 It ended with was Miss Sestito giving a</p> <p>23 personal guarantee, the Summer State Corporation being</p> <p>24 the -- being on the lease, being on the hook, if you</p>

Brendan Sherman

8 (Pages 26 to 29)

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1 will, with her personal guarantee behind it, and as a  
2 last stitch effort, Miss Sestito offered, I think it was  
3 up to three-month's rent prepaid so that your client felt  
4 comfortable with the new tenant. That was dismissed out  
5 of hand by your client.

6 Q. But to answer my question: Do you know why  
7 she sent the second letter?

8 A. It was at my request.

9 Q. You requested that -- did you request that she  
10 include the specific language about the assignment?

11 A. Absolutely not.

12 Q. So what did you request of her?

13 A. I asked her for a letter setting forth why she  
14 did not want to proceed with the transaction. She  
15 provided it to me. This was sufficient. I called her, I  
16 said, Roseann, I received the letter; thank you very  
17 much; I will be cutting the check tomorrow; you will get  
18 it in the mail within two days.

19 Q. So, to be clear, the September 1st fax letter  
20 was not sufficient; according to you, the September 2nd  
21 letter was sufficient?

22 A. I don't have any recollection of receiving the  
23 September 1st fax transmission, but, clearly, she and I  
24 were working post September 1st to try to close this. I

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1 assignment, and assuming the -- this inspection was  
2 fine --

3 A. This is a cursory assignment, walk through --  
4 it's a walk through type thing.

5 Q. Your position is she would have proceeded to  
6 closing?

7 A. Absolutely. She had given us the \$14,000.  
8 She was very serious about closing. She was very excited  
9 about the September 1st closing. We worked very hard to  
10 still close on September 1st.

11 Q. Did Miss Sestito raise a concern to you  
12 approaching closing that she was not aware of the fact  
13 that you were affiliated or a member or had some kind of  
14 interest in both the underlying asset and acting as the  
15 intermediary, Elsher (sic) Group?

16 A. Elsher Group, that's E-l-l-s-h-e-r, G-r-o-u-p.

17 Q. Ellsher Group?

18 A. Not at all. In fact, she thanked me  
19 continuously. She knew that I was going to be personally  
20 providing two weeks of training, so there could be no  
21 surprise, leading up to September 1st, that I had a  
22 personal interest in the ownership of that business in  
23 that how would someone who did not have an ownership  
24 interest or an employment interest, let's say, with JFS,

Page 27

1 think my letters to your client go up to the date, I  
2 don't recall exactly when they go up to, still pleading  
3 for the assignment, and that wasn't given.

4 BY MR. MATLUSKY:

5 Q. So, it's your position, but for the  
6 assignment, Miss Sestito or Sumner State, LLC would have  
7 purchased this Laundromat?

8 A. Here is what we did: She wanted to have an  
9 inspector come in there, and we had no problem with that.  
10 She scheduled that at least three or four times. And  
11 every time she would call me and say, Has the landlord  
12 given his consent because I don't want to go to the cost  
13 of paying for an inspector if I know that this can't  
14 happen because we can't proceed without the lease, and  
15 she did that up to closing. And we wanted to work with  
16 her.

17 We said, Look, if you -- if we get the  
18 consent from the landlord tomorrow, schedule the guy for  
19 the next day, and she scheduled him at least three or  
20 four times and cancelled him and called us and cancelled,  
21 saying, I want you to know I cancelled this gentleman  
22 from coming out since we couldn't get an assignment from  
23 the landlord.

24 Q. So, is it your position that but for the

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1 do two weeks of hard training on the machines with her?

2 Q. I suppose that could be possible without  
3 someone having an ownership interest; however --

4 A. I guess the question would be why would they  
5 do that?

6 Q. That's a question for that individual person.  
7 But I suppose it could be done.

8 Did you inform her of your interest or  
9 did she find out --

10 A. I have asked and answered this. I have told  
11 you repeatedly that I told her, somewhere around the time  
12 of signing the Asset Purchase Agreement, that I had a  
13 personal interest in the laundry and that I would be  
14 providing the training personally for her for the two  
15 weeks per the agreement post closing. I hope I am not  
16 going too fast.

17 Q. Pursuant to the Asset Purchase Agreement and  
18 Dr. Abbasinio's letters and correspondence between you  
19 and him requesting the assignment, were the other issues  
20 addressed? Did you provide Miss Sestito a copy of the  
21 lease?

22 A. Yes.

23 Q. And did you provide her a copy of the CAM  
24 charges, the common area maintenance charges?

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Brendan Sherman

9 (Pages 30 to 33)

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1 A. There are no common area maintenance charges.  
 2 But if you are asking: Did I provide her with the  
 3 quarterly payments designating our share, 'our' being  
 4 JFS' share of the strip center's insurance, sewage, and  
 5 taxes, yes. Everything that was an obligation to provide  
 6 to her in the Asset Purchase Agreement was provided to  
 7 her. Everything that she needed, she received.  
 8 Q. Why did JFS Holdings, Inc., refuse to sign a  
 9 guarantee for one year?  
 10 A. Well, this is the first time you guys aren't  
 11 calling it a personal guarantee. I guess you have  
 12 figured out that the personal guarantee can't be signed  
 13 by a corporation.  
 14 Q. We can phrase it a personal guarantee.  
 15 Whether it's personal to the corporation -- it could be  
 16 splitting of terms or splitting of hairs.  
 17 A. Quite frankly, no, it's not a splitting of  
 18 hairs and I wanted to make sure that that was on there.  
 19 The interrogatories requested why didn't JFS Holdings, as  
 20 a corporate entity, provide a personal guarantee? As I  
 21 am sure, hopefully, you are aware, a corporation is its  
 22 own legal entity and cannot provide a personal guarantee.  
 23 That can only be done by an individual. So I just want  
 24 to clear up the record as to what you are asking.

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1 Q. The definitions and instructions pursuant to  
 2 defendant's first set of interrogatories directed to  
 3 plaintiffs, under the "Definition" paragraph, it  
 4 specifically calls for the terms you, your, or yours  
 5 refers to plaintiff.  
 6 A. Which is JFS Holdings, Inc.  
 7 MS. DIROCCO: And any plaintiff's  
 8 agents, employers, service, workmen, other  
 9 representatives acting on plaintiff's behalf. So that  
 10 would include a personal guarantee.  
 11 THE WITNESS: No, it wouldn't, because  
 12 you would have to, in that interrogatory, direct the  
 13 exact person that you are asking for -- but let's move  
 14 off this because I don't have time to deal with this.  
 15 If you are asking why JFS Holdings would  
 16 not provide a guarantee, because it would no longer own  
 17 the business. It would have no control. It wouldn't  
 18 have the keys to the business. If anything went wrong,  
 19 JFS couldn't do anything to minimize its loss. JFS  
 20 couldn't enter the business. That, in partial part, off  
 21 the top of my head, is one of the reasons why JFS  
 22 wouldn't do that.  
 23 Secondly, JFS would not provide a  
 24 personal guarantee or, I am sorry, I apologize, a

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1 guarantee since the landlord had a new tenant that was  
 2 providing not only the assets uncumbered in Summer  
 3 State, but also a personal guarantee and a few months  
 4 prepaid rent. So he had a suitable tenant and did not  
 5 need additional security.  
 6 BY MR. MATLUSKY:  
 7 Q. So, you refused on behalf of JFS and/or  
 8 yourself?  
 9 A. No, just as of JFS. It had nothing to do with  
 10 me personally.  
 11 Q. Would you personally --  
 12 A. Absolutely not. Why would I -- does your  
 13 client --  
 14 Q. You have answered the question.  
 15 A. Does your client have a personal guarantee  
 16 right now? Does he have a personal guarantee right now?  
 17 Q. He has a lease with JFS Holdings, Inc., but  
 18 for sake of this particular assignment in question, if it  
 19 came up that you, personally, Brendan Sherman --  
 20 A. Absolutely not.  
 21 Q. -- you would not have signed a personal  
 22 guarantee?  
 23 A. Absolutely not.  
 24 Q. And also, based off what you just said,

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1 neither would corporate entity JFS Holdings, Inc.?  
 2 A. That's correct.  
 3 Q. Even knowing now that JFS Holdings, Inc., in  
 4 essence, lost the sale of the business for 150,000 --  
 5 A. 140,000.  
 6 Q. 140,000, excuse me, you would not give any  
 7 weight to signing a corporate guarantee, JFS, Inc.?  
 8 A. Can we go off the record for a minute?  
 9 Q. No. I'd prefer to stay on the record for  
 10 this.  
 11 A. We are touching on settlement discussions here  
 12 and I think they should be off the record. You are  
 13 touching on settlement discussions. You know better than  
 14 this. Go off the record and we will -- I will ask you  
 15 questions. We can then go back on the record and you can  
 16 put on there whatever you want.  
 17 Q. It's my position that we are not dealing with  
 18 settlement discussions, however, we will go off the  
 19 record.  
 20 (Discussion off the record.)  
 21 BY MR. MATLUSKY:  
 22 Q. Do you know if Miss Scatito ended up  
 23 purchasing a different business?  
 24 A. I have no idea. The last I spoke to her was

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Brendan Sherman

10 (Pages 34 to 37)

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1 the day I received a letter dated September 2nd, and I  
2 advised her, as I previously stated, that I received it  
3 and I would be cutting her a check the next day for the  
4 return of her money.

5 Q. You had no further verbal discussions?

6 A. After that -- whether it was the 3rd, the day  
7 after, that was my last discussion with her, telling her  
8 that I received the letter, apologized that this couldn't  
9 happen, and that she would get her money less the \$40 fee  
10 that was paid to your client within a couple of days.  
11 And she did.

12 Q. Verbal or written discussions?

13 A. No. This was a -- to the best of my  
14 knowledge, recollection, etcetera, this was the last  
15 thing I received from Miss Sestito. Whether or not it  
16 was -- it's dated September 2nd. Quite frankly, I  
17 remember working with her almost through the 5th of  
18 September, but, you know, whenever I received this, it  
19 was sometime between the 2nd and the 5th, and that was  
20 when my conversation was.

21 Q. When you returned the deposit, the \$14,000  
22 security deposit, prepaid deposit --

23 A. Well, it's a down payment.

24 Q. Down payment, you returned that after you

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1 (Recess taken.)  
2 MR. MATLUSKY: At this point, we have no  
3 further questions for the deposition and it's over.

4 (The deposition was concluded at 11:38  
5 a.m.)  
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Page 35

1 received the September 2nd, 2005, letter?

2 A. Yeah. Because I said I want written  
3 confirmation that you are cancelling the sale.

4 Q. Would you have returned her deposit and  
5 cancelled the sale, knowing what went on, without written  
6 confirmation from Miss Sestito?

7 A. Well, no. I think that if you are going to  
8 pull out of the Asset Purchase Agreement, there needs to  
9 be a written acknowledgment of why you are terminating  
10 the agreement.

11 Q. She provided you a September 2nd, 2005, notice  
12 considering the agreement of sale or contract null and  
13 void. After that, did you, by way of any of the  
14 entities, provide a letter, correspondence, or release to  
15 her releasing her of any of her contractual rights, other  
16 than the return of the security deposit?

17 A. I don't recollect sending her anything but a  
18 check.

19 Q. Do you recall if there was a cover letter or  
20 anything associated with that return of the check?

21 A. There could have been. I don't recall. I  
22 don't have it. It's not in my records.

23 Q. I am going to take a recess for 30 seconds.

24 A. That's fine.

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1 INDEX TO TESTIMONY

2 BRENDAN SHERMAN

PAGE

3 Examination by Mr. Matluskay

2

4 -----  
5  
6 INDEX TO EXHIBITS

PAGE

7 (There were no exhibits marked for identification.)  
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Brendan Sherman

11 (Page 38)

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1 CERTIFICATE

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional  
5 Reporter and Notary Public, within and for the County and  
6 State aforesaid, do hereby certify that the foregoing  
7 deposition of BRENDAN SHERMAN, was taken before me,  
8 pursuant to notice, at the time and place indicated; that  
9 said deponent was by me duly sworn to tell the truth, the  
10 whole truth, and nothing but the truth; that the  
11 testimony of said deponent was correctly recorded in  
12 machine shorthand by me and thereafter transcribed under  
13 my supervision with computer-aided transcription; that  
14 the deposition is a true record of the testimony given by  
15 the witness; and that I am neither of counsel nor kin to  
16 any party in said action, nor interested in the outcome  
17 thereof.

18 WITNESS my hand this 31st day of May A.D. 2006.

19

20

21 RENEE A. MEYERS  
22 REGISTERED PROFESSIONAL REPORTER  
23 CERTIFICATION NO. 106-RPR  
24 (Expires January 31, 2008)

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# Fax

**To:** Brendan Sherman/Elsher Group, Inc. **From:** Roseann Sestito

---

**Fax:** 610-935-4851 **Pages:** 2

---

**Phone:** 610-935-4851 **Date:** 9/1/05

---

**Re:** Basin Plaza Laundry **CC:**

---

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• **Comments:**

Brendan,

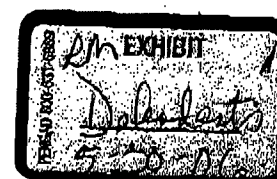
The Asset Purchase Agreement for the business located at 509 Basin Road, Basin Road Plaza, New Castle, DE 19720 (AKA Basin Plaza Laundry) will now be considered void as of Sept. 1 2005.

I wanted to have an Inspector come out to look at the business before the settlement date and since the settlement date is today, there's no way an Inspector can review it ahead of time.

Please send me the down payment of \$14,000 less the \$40 fee you paid.

Thank you,

Roseann Sestito



Roseann Sestito

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JFS HOLDINGS, INC., )  
Plaintiff, )  
v. ) Civil Action No.  
ABESSINIO PROPERTY MANAGEMENT, ) 05-709-SLR  
INC., )  
Defendant. )

Deposition of ROSEANN A. SESTITO taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of The Matluskys Firm, LLC, 1423 North Harrison Street, Wilmington, Delaware, on Tuesday, May 30, 2006, beginning at approximately 9:10 a.m., there being present:

APPEARANCES:

THE MATLUSKY FIRM, LLC  
DAVID E. MATLUSKY, ESQ.  
TARA M. DIROCCO, ESQ.  
1423 North Harrison Street  
Wilmington, Delaware 19806  
for Defendant

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## Roseann Sestito

2 (Pages 2 to 5)

Page 2

ROSEANN A. SESTITO,  
the witness herein, having first been  
duly sworn on oath, was examined and  
testified as follows:

BY MR. MATLUSKY:

Q. Good morning. I am David Matlusky and I am  
the attorney for Abessinio Property Management and  
Dr. Francis Abessinio, and with me this morning is my  
associate, Tara Dirocco. Before we start, I would just  
like to go through just a few logistical or housekeeping  
issues.

This is a deposition involving the case  
of JFS Holdings, Inc. Versus Abessinio Property  
Management, Inc. I am going to ask you a few questions  
to find out the facts giving rise to the underlying  
lawsuit.

If you do not hear a question, say so  
and I will repeat it. If you do not understand a  
question, say so and I will rephrase it. If you realize  
that an earlier answer that you gave was inaccurate or  
incomplete, just interrupt and say that you want to  
correct or supplement an earlier answer and you will be  
allowed to do so.

If you need to stop to use the rest

Page 3

room, get a cup of coffee or water, just let me know and  
you will be permitted to do so. If you do not know or do  
not remember information or know how to answer a  
question, just say so.

Are you on any medication right now that  
might impair your recollection?

A. No.

Q. Also, I am requesting that all questions be  
answered verbally. We have a stenographer here today and  
she won't be able to interpret non-verbal communications  
as to like a nod of the head, so if you can just  
verbalize all your answers.

A. Okay.

Q. And, also, for the record, the witness, can  
you state your name?

A. Roseann Sestito.

Q. Attorney David Matlusky and attorney Tara  
Dirocco are the only people present for this deposition.

Now we are going to move on to a few  
questions.

A. Okay.

Q. How do you know Brendan Sherman?

A. I was looking for a business to buy last year,  
I believe it was February, that's when I started looking

Page 4

for a business, and I came across a listing for a  
Laundromat in New Castle County for sale on  
Bisbuy/sell.com, which is where they buy and sell  
businesses, and his name appeared as the contact for that  
listing.

Q. Do you recall the name of a business that was  
advertising or was it just Brendan Sherman's name?

A. No. It was just his name.

Q. And what kind of business was it?

A. A Laundromat.

Q. And after you saw his name at that point, what  
did you do?

A. I called him up to ask about the business. It  
said that he was the broker, so I called him up, asked  
him about the business. He gave me some information. I  
had to sign a disclosure agreement, I guess that's  
normal, and he gave me the address and some information.

Q. Do you recall if that agreement was a  
confidentiality agreement?

A. Yes.

Q. When you were on the website, the internet,  
looking for businesses to buy, what businesses were you  
looking for? Were you looking for this particular type  
of business or just anything in general?

Page 5

A. I looked at a lot of different businesses and  
I did look for Laundromats because I did research them  
beforehand. I thought they would be a good business deal  
to get into.

Q. What other kinds of businesses did you  
actually pursue?

A. Let's see. A website business that sells baby  
merchandise. That's what I ended up buying in September.

Q. September of --

A. '05.

Q. Did you know Brendan Sherman at all prior to  
your investigation of this business?

A. No.

Q. When you were investigating this business and  
you signed this confidentiality agreement, what  
information were you provided by Brendan Sherman?

A. I was provided with the address to take a look  
at the place where it was located initially.

Q. And, again, you said what month was that --  
what month would you say that you signed that  
confidentiality agreement?

A. Let me check. I believe it was May 2005.

Q. Did you have any contact with an Ellsher  
Group, Inc.?

Roseann Sestito

3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 A. Yes.</p> <p>2 Q. What was your involvement with them?</p> <p>3 A. He represented -- Brendan Sherman represented</p> <p>4 the Ellsher Group as the broker.</p> <p>5 Q. Did you have any dealings with any particular</p> <p>6 individual at the Ellsher Group, Inc.?</p> <p>7 A. Only Brendan Sherman.</p> <p>8 Q. So, there was no one else that you spoke with</p> <p>9 as far as an individual that you can remember or had any</p> <p>10 correspondence?</p> <p>11 A. Nobody else.</p> <p>12 Q. But you were -- you do recall the name Ellsher</p> <p>13 Group, Inc.?</p> <p>14 A. Yes. His correspondence had that name on</p> <p>15 their paperwork.</p> <p>16 Q. And that was Brendan Sherman's correspondence?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any of that paperwork in your</p> <p>19 possession?</p> <p>20 A. Yes. I have the income statement with the</p> <p>21 Ellsher Group listed on there that he provided to me.</p> <p>22 Q. So, for all intents and purposes, all your</p> <p>23 dealings were with Brendan Sherman?</p> <p>24 A. Yes, sir.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Well, when you signed the Asset Purchase</p> <p>2 Agreement on August 1st, it was approximately an</p> <p>3 eight-page document?</p> <p>4 A. Yes.</p> <p>5 Q. Prior to signing that, was there a back and</p> <p>6 forth of the language of the -- or the content of the</p> <p>7 Asset Purchase Agreement to review that you had to mark</p> <p>8 up and send back to Brendan Sherman or --</p> <p>9 A. As far as the language, yes, I would say I</p> <p>10 wanted to know exactly what I was getting into, so -- and</p> <p>11 what my -- in case there was anything I guess I needed to</p> <p>12 do before any contingencies that had to occur.</p> <p>13 Q. Did you have an attorney at that point</p> <p>14 representing you in the purchase of the business?</p> <p>15 A. No.</p> <p>16 Q. Did an attorney, on your behalf, review the</p> <p>17 Asset Purchase Agreement?</p> <p>18 A. Yes, they did.</p> <p>19 Q. What was the name of that attorney?</p> <p>20 A. I don't know. It was a long time ago. I</p> <p>21 really don't remember.</p> <p>22 Q. Was it someone in Wilmington?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know where they were located?</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Were you aware of another entity called JFS</p> <p>2 Holdings, Inc.?</p> <p>3 A. Ycs.</p> <p>4 Q. And what's your understanding of that company?</p> <p>5 A. I was told by Brendan Sherman that JFS</p> <p>6 Holdings were the actual owners of the Laundromat</p> <p>7 business.</p> <p>8 Q. So, you signed this confidentiality agreement</p> <p>9 in May of 2005. How long were you negotiating with</p> <p>10 Brendan Sherman as to the purchase of this business?</p> <p>11 A. Let's see. I had the signed agreement for the</p> <p>12 purchase in August 1, 2005.</p> <p>13 Q. So, you have an Asset Purchase Agreement dated</p> <p>14 August 1st, 2005?</p> <p>15 A. Ycs.</p> <p>16 Q. Do you remember if that is the date that you</p> <p>17 actually executed that document or signed that agreement?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Prior to signing that Asset Purchase</p> <p>20 Agreement, were there any other agreements that you had</p> <p>21 or draft agreements that went back and forth?</p> <p>22 A. I am trying to recall. I was provided with, I</p> <p>23 guess, the bills for the -- for a year. I don't know if</p> <p>24 that's what you mean.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. No.</p> <p>2 Q. Do you think you could find out the name of</p> <p>3 that particular individual in the next couple of weeks?</p> <p>4 A. No, I don't think so. It was one of those</p> <p>5 things where they had an ad in the paper, and it was for</p> <p>6 like \$50, you could get a consultation, so I had them</p> <p>7 look at it briefly.</p> <p>8 Q. Did you actually go to somebody's office?</p> <p>9 A. Yes.</p> <p>10 Q. Do you remember where the office was?</p> <p>11 A. I believe it was in Greenville somewhere. I</p> <p>12 am not sure. Sorry. But he just went over, you know,</p> <p>13 what I needed to do. I had my accountant look at it.</p> <p>14 Q. What's the name of your accountant -- the</p> <p>15 accountant that you use?</p> <p>16 A. His name is Dennis -- Dennis --</p> <p>17 Q. Do you know where he is located?</p> <p>18 A. Greenville. He is in my phone.</p> <p>19 Q. Just for the record --</p> <p>20 A. It just says "Dennis accountant" on it.</p> <p>21 Sorry.</p> <p>22 Q. Miss Sestito is checking the phone number.</p> <p>23 A. Dennis -- I am completely at a blank. I am</p> <p>24 sorry.</p>

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## Roseann Sestito

4 (Pages 10 to 13)

Page 10

1 Q. That's fine.  
 2 A. I don't remember.  
 3 Q. Do you think you could provide the name in the  
 4 next week or so?  
 5 A. Absolutely. Yes.  
 6 Q. Thanks. How did the sales price of this  
 7 Laundromat or this business come about or how was it  
 8 determined?  
 9 A. Well, when I first saw the listing, it must  
 10 have been in February or March of 2005, it was listed for  
 11 \$135,000. Brendan Sherman advised me that they, the  
 12 people that were selling the business, wanted to hold  
 13 onto it for a little bit. It was about two months later  
 14 when either I contacted him or he contacted me, "The  
 15 price," he said, "they increased it by 5,000 to 140,000."  
 16 Q. And is that the price that you agreed to in  
 17 the Asset Purchase Agreement?  
 18 A. Yes. That's correct.  
 19 Q. So, at what point did you decide to buy the  
 20 business?  
 21 A. At what point?  
 22 Q. Prior to -- you signed the Asset Purchase  
 23 Agreement --  
 24 A. August.

Page 12

1 A. Yes, he did.  
 2 Q. -- for this property? When were you  
 3 anticipating actually to go to settlement or to close on  
 4 the purchase?  
 5 A. September 1st.  
 6 Q. Of 2005?  
 7 A. Of 2005.  
 8 Q. As to the purchase price, how were you  
 9 planning on financing that or paying for the business?  
 10 A. I took out several loans. I took out home  
 11 equity line of credit. I borrowed from credit cards. I  
 12 took out a personal loan.  
 13 Q. During what time frame did you do that?  
 14 A. Before I signed the agreement to make sure I  
 15 had enough money to pay for it.  
 16 Q. So, it was before August 1st, 2005?  
 17 A. That's correct.  
 18 Q. And at that point, did you have the entire  
 19 amount, 150,000?  
 20 A. 140,000.  
 21 Q. 140,000, excuse me.  
 22 A. Yes, I did.  
 23 Q. In the Asset Purchase Agreement, there is a  
 24 reference to a deposit.

Page 11

1 Q. August 1st?  
 2 A. Right.  
 3 Q. So, prior to that, what -- at what point did  
 4 you let Brendan know, Okay, I want to buy this place;  
 5 let's sign the contract?  
 6 A. I believe it was in July.  
 7 Q. July of 2005?  
 8 A. July 2005.  
 9 Q. And then during -- between July and actually  
 10 signing the contract, what were you doing as far as due  
 11 diligence or reviewing --  
 12 A. I was looking -- reviewing the bills that he  
 13 sent me in order to calculate what the income would be  
 14 per year on the -- I was basically trying to calculate  
 15 what the -- his income statement had said.  
 16 Q. What did he provide you with? An income  
 17 statement?  
 18 A. Yes.  
 19 Q. What other documents do you recall that he  
 20 provided you with?  
 21 A. Water bill, electric bill, Verizon bill, waste  
 22 management bill.  
 23 Q. Did he provide you a copy of the lease, the  
 24 underlying lease agreement --

Page 13

1 A. Yes, 14,000.  
 2 Q. Did you provide that to Brendan Sherman?  
 3 A. Yes, I did.  
 4 Q. Do you have a copy of a cancelled check for  
 5 that?  
 6 A. I don't think I do.  
 7 Q. Who did you make that check payable to?  
 8 A. I believe it was JFS Holdings.  
 9 Q. Do you recall if that check was cashed or was  
 10 it just held?  
 11 A. I am sorry. It was the Ellsher Group that I  
 12 made the check out to.  
 13 Q. You made the check payable to Ellsher Group?  
 14 A. Right.  
 15 Q. Do you know when that was dated, that  
 16 particular check, roughly?  
 17 A. August '05.  
 18 Q. Do you know when in August? Was it given  
 19 after the Asset Purchase Agreement was signed or with the  
 20 Asset Purchase Agreement?  
 21 A. It was given with the Asset Purchase  
 22 Agreement.  
 23 Q. And do you remember if that check was cashed?  
 24 A. It was not cashed.

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5 (Pages 14 to 17)

Page 14	Page 16
<p>1 Q. Was the check ever given back to you?</p> <p>2 A. Yes, it was.</p> <p>3 Q. Did you ever discuss financing the purchase</p> <p>4 with a financing company or a bank?</p> <p>5 A. I was advised by Brendan Sherman that because</p> <p>6 the tax returns were not clear, that I wasn't able to get</p> <p>7 bank financing.</p> <p>8 Q. What year tax returns did he provide you with</p> <p>9 for the business?</p> <p>10 A. He did not provide me with any tax returns</p> <p>11 because I was told that the people that owned the</p> <p>12 Laundromat also had other Laundromats that they owned and</p> <p>13 it would be very unclear as to what income came from this</p> <p>14 particular Laundromat.</p> <p>15 Q. Did the accountant that you use, did he raise</p> <p>16 any questions as to requiring those particular tax</p> <p>17 returns?</p> <p>18 A. Yes, but it wasn't available, so I went with</p> <p>19 the expenses that he gave me in order to calculate what</p> <p>20 the income would be from the water use.</p> <p>21 Q. How many years' worth of expenses did he</p> <p>22 provide?</p> <p>23 A. One full year.</p> <p>24 Q. Was your accountant satisfied with any</p>	<p>1 A. Yes.</p> <p>2 Q. Are you aware that there was a contingency</p> <p>3 language in the contract, in the agreement of sale?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know what page on the agreement of sale</p> <p>6 the contingency language appeared?</p> <p>7 A. Yes.</p> <p>8 Q. What page was that?</p> <p>9 A. Page 5.</p> <p>10 Q. Would that be page 5, paragraph 13?</p> <p>11 A. Paragraph 13, yes.</p> <p>12 Q. In particular, would that be paragraph 13,</p> <p>13 section A?</p> <p>14 A. Yes.</p> <p>15 Q. At what point did Brendan Sherman advise the</p> <p>16 landlord of his intent or his representation or him</p> <p>17 trying to sell this business to someone?</p> <p>18 A. As far as I know, it wasn't until the very</p> <p>19 last minute.</p> <p>20 Q. What do you mean by "the very last minute"?</p> <p>21 A. I would say in August.</p> <p>22 Q. Roughly the last week of August? The middle</p> <p>23 of the month?</p> <p>24 A. I would say the third week in August.</p>
Page 15	Page 17
<p>1 documents that were provided by Brendan Sherman?</p> <p>2 A. I would say not, but I was satisfied because I</p> <p>3 researched how to calculate what the income would be from</p> <p>4 the water bills.</p> <p>5 Q. Did your accountant advise you one way or</p> <p>6 another to proceed with the purchase based on the</p> <p>7 financials or any of their representations or bills that</p> <p>8 were provided?</p> <p>9 A. No. I made the decision on my own, but it was</p> <p>10 because I told them that I calculated what I did and it</p> <p>11 came out to be what was told to me as far as what the</p> <p>12 revenue would be.</p> <p>13 Q. Did the seller or Brendan Sherman provide you</p> <p>14 a copy of CAM charges, also known as common area</p> <p>15 maintenance charges?</p> <p>16 A. He advised me what they would be.</p> <p>17 Q. Were you satisfied with the CAM charges and/or</p> <p>18 the lease that he provided?</p> <p>19 A. Yes.</p> <p>20 Q. One of the contingencies in the Asset Purchase</p> <p>21 Agreement involved the seller providing an assignment of</p> <p>22 the lease to the purchaser.</p> <p>23 Are you aware of any issues involving</p> <p>24 the assignment?</p>	<p>1 Q. Prior to Brendan Sherman advising the landlord</p> <p>2 of his intent to sell the business --</p> <p>3 A. I am sorry. Can I -- it's August 15th, middle</p> <p>4 August, not the third week.</p> <p>5 Q. Middle of August is -- let's just discuss that</p> <p>6 for a second. Middle of August was when Brendan Sherman</p> <p>7 advised the landlord that he was trying to sell the</p> <p>8 business or --</p> <p>9 A. Yes.</p> <p>10 Q. -- that he was representing the sale of the</p> <p>11 business?</p> <p>12 A. Yes. I had to fill out a rental application</p> <p>13 to purchase the Laundromat.</p> <p>14 Q. Who did you receive that application from?</p> <p>15 A. Brendan Sherman.</p> <p>16 Q. Did Brendan Sherman explain what that</p> <p>17 application was for?</p> <p>18 A. I received a letter that said what it was for.</p> <p>19 Q. When was that letter dated?</p> <p>20 A. August 15th. Excuse me. August 15th is when</p> <p>21 it was dated. I didn't receive it until August 31st.</p> <p>22 Q. And who was that letter from?</p> <p>23 A. JFS Holdings.</p> <p>24 Q. And it was dated August 15th, 2005?</p>

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6 (Pages 18 to 21)

Page 18

1 A. Yes.  
2 Q. And what did that particular letter reference?  
3 A. The rental application for the person  
4 attempting to purchase the Laundromat.  
5 Q. And who is that letter addressed to?  
6 A. It's addressed to Dr. Abbessinio.  
7 Q. And how did you end up getting a copy of that  
8 letter?  
9 A. Brendan had sent it to me, a copy of it.  
10 Q. Did you fill out that application?  
11 A. Yes, I did.  
12 Q. And what did you do with it?  
13 A. I had to fax it over to -- I believe it was  
14 Brendan.  
15 Q. When did you do that?  
16 A. It might have been Dr. Abbessinio. I am not  
17 really sure.  
18 Q. Do you recall when you actually faxed that or  
19 sent that to either Dr. Abbessinio or Brendan Sherman?  
20 A. It was sometime in August. Oh, I have it  
21 right here. I am sorry. I sent it to Brendan Sherman  
22 August 12th.  
23 Q. It was sent on August 12th?  
24 A. Yes.

Page 19

1 Q. The application?  
2 A. The rental application.  
3 Q. Completely filled out by you?  
4 A. Yes.  
5 Q. Prior to August 15th or August 12th, did you  
6 have any conversations with Dr. Abbessinio?  
7 A. No.  
8 Q. Did you know Dr. Abbessinio?  
9 A. No. I knew about him through Brendan.  
10 Q. What did you know about him?  
11 A. That he was the owner of the building that  
12 held the Laundromat.  
13 Q. And that he would be your landlord?  
14 A. That's correct.  
15 Q. Are you aware of any other contingencies that  
16 were in the Asset Purchase Agreement?  
17 A. Yes.  
18 Q. What were they?  
19 A. That I would have a physical inspection of the  
20 business a reasonable time prior to the settlement.  
21 Q. Did you conduct your physical inspection of  
22 the property?  
23 A. No. And -- should I keep going?  
24 Q. Yes.

Page 20

1 A. The reason why that didn't happen is because I  
2 wasn't sure if the -- the actual assignment of lease  
3 would happen, and, therefore, I didn't want to pay for  
4 someone to go in and inspect the business if I wasn't  
5 going to have the lease assigned over to me. And, so, I  
6 wasn't given any time to do the inspection because I  
7 thought that, obviously, the sale wasn't going to go  
8 through because the assignment of lease didn't happen.  
9 Q. Did you provide any personal information to  
10 the landlord, Dr. Abbessinio? "Personal information"  
11 being personal financial statements or any other  
12 information?  
13 A. No.  
14 Q. Any information supporting the -- your  
15 financial backing for this?  
16 A. No.  
17 Q. You were going to be purchasing this business  
18 in the name of an entity. Do you remember the name of  
19 the entity?  
20 A. Yes.  
21 Q. What was that?  
22 A. Summer State, LLC.  
23 Q. Do you know if that entity was formed prior to  
24 entering into the Asset Purchase Agreement?

Page 21

1 A. It was formed, yes, it was.  
2 Q. Do you remember who formed it?  
3 A. I formed it.  
4 Q. And did you do the necessary filings with the  
5 Secretary of State, do you remember?  
6 A. Yes.  
7 Q. Who else is involved in Summer State, LLC?  
8 A. Nobody.  
9 Q. Just you?  
10 A. Just me.  
11 Q. You are the sole owner, person involved?  
12 A. Yes. That's correct.  
13 Q. When you set up that company or that limited  
14 liability company, where did you set it up? With what  
15 state?  
16 A. Delaware.  
17 Q. Do you remember when that was actually set up?  
18 A. I believe it was August, July or August.  
19 Q. Was that entity set up strictly for the  
20 purchase of this asset?  
21 A. Yes.  
22 Q. The "asset" being the Laundromat?  
23 A. The Laundromat business, yes. I now use that  
24 company for a different business.



## Roseann Sestito

7 (Pages 22 to 25)

Page 22

1 Q. Would that be the business, the baby  
2 merchandising business?

3 A. Yes.

4 Q. Were there any other issues prior to  
5 settlement, towards the end of August, that were  
6 unresolved between you and Brendan Sherman?

7 A. Yes. Besides the inspection of the business  
8 that I wasn't able to do because the assignment of lease  
9 didn't occur, I was -- I feel like I was deceived by  
10 Brendan Sherman because I was told by Dr. Abbesinio that  
11 he is also the owner of the business.

12 Q. Just by way of clarification, when you say  
13 "owner of the business," what do you mean by that?

14 A. The owner of the Laundromat business.

15 Q. So, when did that information become relevant  
16 or when did you become aware of that?

17 A. When I spoke with Dr. Abbesinio.

18 Q. Do you remember when that was? Was it after  
19 August 15th or was it after --

20 A. Yes, it was.

21 Q. Was it before September 1st?

22 A. Yes, it was.

23 Q. Do you remember roughly how many days before  
24 September 1st?

Page 23

1 A. Maybe a week.

2 Q. Who contacted who?

3 A. I contacted Dr. Abbesinio because Brendan was  
4 having trouble getting the lease assigned to him from  
5 Dr. Abbesinio. He was giving him a hard time for some  
6 reason.

7 Q. When you say "he," who do you mean by "he"?

8 A. Dr. Abbesinio was giving Brendan a hard time  
9 about assigning the lease without him being on the lease  
10 for at least a year.

11 Q. Okay.

12 A. And, so, I contacted Dr. Abbesinio about that  
13 issue.

14 Q. How did you become aware of that issue? Was  
15 it --

16 A. Brendan had told me that.

17 Q. Okay.

18 A. And, so, I contacted Dr. Abbesinio and he had  
19 told me that he is the actual owner of the Laundromat  
20 business, that Brendan is the owner of the business.

21 Q. And, at that point, you weren't aware that he  
22 had some kind of equity or he was involved in the actual  
23 Laundromat, himself?

24 A. At that point, I just wanted to get out of the

Page 24

1 contract as soon as possible.

2 Q. Why did you want to get out of the contract?

3 A. Because I felt like Brendan had totally  
4 deceived me about this whole business, and he represented  
5 himself as the broker, not the owner. He kept saying  
6 "they," and, "They are raising the price," and, "They are  
7 doing this," and, "Well, they can't talk to you because  
8 they are busy." I was absolutely stunned at this whole  
9 business transaction, and I just wanted to get out of it.  
10 And I am still having nightmares about it.

11 Q. Well, at that point, were you confused as to  
12 Brendan Sherman's role in this whole interaction with you  
13 as the buyer?

14 A. At that point, I looked up the Ellsher Group,  
15 I looked up JFS Holdings, I did research on my own and  
16 found out that Brendan was the owner of the Ellsher Group  
17 but he was also the owner of the Laundromat.

18 Q. When did you find that out? Was that before  
19 September 1st?

20 A. Yes. And thank God that Dr. Abbesinio didn't  
21 assign the lease over because I just wanted no part of  
22 this deal at all.

23 Q. So, at that point, if, before September 1st,  
24 the tentative date for closing on the Asset Purchase

Page 25

1 Agreement, if the landlord, Dr. Abbesinio, agreed to  
2 assigning the lease, would you have consummated the  
3 purchase and gone through with it?

4 A. I wouldn't have had a choice. I had told  
5 Brendan that I no longer wanted it even if he had  
6 assigned the lease to me, but Brendan had told me I  
7 didn't have a choice since I signed the contract.

8 Q. Have you or your entity been sued by any of  
9 the parties involved in this case?

10 A. No. I think if anyone should be suing, it  
11 should be me, but I didn't want to go through with any of  
12 this. I didn't want any part of this Laundromat anymore.

13 Q. Did JFS Holdings, Inc., or Brendan Sherman  
14 discuss the option with you of adding time to the closing  
15 date of September 1st to go beyond September 1st or  
16 resolve any issues that Brendan had with Abbesinio?

17 A. Yes. He wanted me to add another week or two  
18 to the contract and I said, "No, the contract says  
19 September 1st." I then sent him a letter that said I no  
20 longer want any part of it. And I first sent him a  
21 letter that said I wanted to have an inspector --

22 Q. When you say "sent him a letter," was that  
23 Brendan Sherman?

24 A. Yes.

Roseann Sestito

8 (Pages 26 to 29)

Page 26

1 Q. What was the date of that letter?  
 2 A. That was the date of the original closing,  
 3 which would have been September 1st.  
 4 Q. What was the content of that letter?  
 5 A. I said that the Asset Purchase Agreement for  
 6 the business located at 509 Basin Road, New Castle,  
 7 Delaware; will now be considered void as of September  
 8 1st, 2005. I wanted to have an inspector come out to  
 9 look at the business before the settlement date, and  
 10 since the settlement date is today, there is no way an  
 11 inspector can review it ahead of time. Please send me  
 12 the down payment of 14,000, less the \$40 fee you paid.  
 13 Q. And that was dated when?  
 14 A. September 1st, addressed to Brendan.  
 15 Q. And that was sent to him by way of fax?  
 16 A. I faxed it, yes.  
 17 Q. And did Brendan respond to that letter in any  
 18 way?  
 19 A. Yes. He called me up and told me that he  
 20 would send me the 14,000, but the reason that I was  
 21 giving here, the inspection, was not good enough, and I  
 22 said, "Okay. I will send you another letter," which I  
 23 believe I e-mailed it to him, that said, "Because the  
 24 assignment of the lease did not occur as of September

Page 27

1 1st, the contract is now void."  
 2 Q. Was the second letter that you sent, was that  
 3 at the direction of Brendan Sherman?  
 4 A. Yes.  
 5 Q. Did Brendan Sherman script that letter in any  
 6 way? Did he provide you with wording for it or send you  
 7 a draft copy of what to write?  
 8 A. No. He just told me verbally.  
 9 Q. And when did you send that letter?  
 10 A. It was the same day, September 1st.  
 11 Q. And who was that sent to?  
 12 A. Brendan Sherman, Ellsher Group.  
 13 Q. I am going to provide you a copy of a letter,  
 14 which is dated September 2nd, 2005, Brendan Sherman,  
 15 Ellsher Group. I am going to provide that for you to  
 16 look at.  
 17 Does that look familiar?  
 18 A. Yes.  
 19 Q. Do you recall writing that?  
 20 A. Yes.  
 21 Q. Was that the content of the letter due to  
 22 Brendan Sherman's suggestion?  
 23 A. That's correct, yes.  
 24 Q. Would you say that letter was scripted by him

Page 28

1 or directed to you to write that?  
 2 A. Well, since my first letter wasn't good enough  
 3 to void the contract and I wanted to get out of it any  
 4 way that I can, I said, Well, you know, obviously, you  
 5 don't have the lease assignment, so that's the reason  
 6 that I am going to give.  
 7 Q. When you say, "The first letter wasn't good  
 8 enough," what makes you think it wasn't good enough?  
 9 A. Mr. Brendan Sherman told me that.  
 10 Q. And why did he tell you it wasn't good enough?  
 11 A. Because he said I had plenty of time to get  
 12 the inspection completed before settlement.  
 13 Q. And what did this inspection consist of?  
 14 A. To have an expert in that field come out and  
 15 look at the shape of the building and the washing  
 16 machines, dryers, electric, plumbing.  
 17 Q. So, that inspection was never even scheduled?  
 18 A. It was scheduled a couple times; however, it  
 19 was never completed because I wasn't about to pay for  
 20 something if the settlement on this Laundromat  
 21 transaction was never going to happen anyway.  
 22 Q. As far as the actual purchase of the business,  
 23 did you procure liability insurance or any type of  
 24 insurance in anticipation of closing on this Laundromat?

Page 29

1 A. It was ready to have -- I was getting the  
 2 insurance, yes.  
 3 Q. Who was that through; do you remember?  
 4 A. No. I don't remember. I am sure I have it  
 5 somewhere in my many papers, but I don't have it with me.  
 6 Q. Did Brendan Sherman, at all, suggest that he  
 7 would keep your security deposit when you decided that  
 8 you didn't want to proceed with the closing?  
 9 A. When I first advised him that I wasn't going  
 10 to purchase due to the fact that I wasn't able to get the  
 11 inspection, he said that I was in violation of the  
 12 contract.  
 13 Q. And how much was your -- that deposit?  
 14 A. 14,000.  
 15 Q. And at that point he said you were in  
 16 violation, what were you thinking?  
 17 A. I said, "I can't believe this." And I wanted  
 18 to get out of it, you know, in any way that I can.  
 19 Q. Because you were thinking you would lose the  
 20 \$14,000?  
 21 A. Yes.  
 22 Q. Were you thinking you would lose more than  
 23 \$14,000?  
 24 A. Yes. I thought I would be sued because of the

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9 (Pages 30 to 33)

Page 30

1 contract.  
 2 Q. How did the \$14,000 deposit come about? How  
 3 was that derived?  
 4 A. Ten percent of the purchase price.  
 5 Q. Did you have any discussions with Brendan  
 6 Sherman after writing the September 2nd, 2005, letter?  
 7 A. Yes. He said he would send me the -- my  
 8 deposit back.  
 9 Q. And did he send that back?  
 10 A. Yes, he did.  
 11 Q. Did he provide you with any documents  
 12 releasing you of the contract or any corresponding  
 13 letters saying that you were released of the contract?  
 14 A. No. I don't remember any of that.  
 15 Q. I'd just like to pause for a second. That  
 16 particular letter, the September 2nd letter, if that can  
 17 be marked as exhibit, I think for sake of --  
 18 A. And I realize I sent it the next day, I guess.  
 19 Q. Okay. September 2nd, 2005?  
 20 A. Yes. Because I sent one September 1st, and I  
 21 guess that wasn't good enough, so September 2nd would  
 22 have been -- no, actually, yes, I do have that with me,  
 23 September 2nd. "Please see the attached letter for the  
 24 termination of the Asset Purchase Agreement."

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1 Q. Is that the one --  
 2 A. That's when I sent the second letter.  
 3 Q. So you also have a letter dated --  
 4 A. September 2nd.  
 5 Q. -- September -- you also have a letter,  
 6 though, dated September 1st?  
 7 A. That's right.  
 8 Q. And --  
 9 A. Which would have been the day before closing.  
 10 Q. Do you have a copy of the September 1st  
 11 letter?  
 12 A. Yes, I do.  
 13 Q. The September 1st letter, I would like marked  
 14 as deposition Exhibit 1.  
 15 (Defendant's Deposition Exhibit No. 1  
 16 was marked for identification.)  
 17 MR. MATLUSKY: And then, also, the  
 18 September 2nd, 2005, Defendant's Exhibit 2?  
 19 A. Do you think I could get a copy of what I just  
 20 gave you back? Is that possible?  
 21 Q. Sure.  
 22 A. I don't have that anymore. That's my only  
 23 copy.  
 24 (Defendant's Deposition Exhibit No. 2

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1 was marked for identification.)  
 2 BY MR. MATLUSKY:  
 3 Q. Did Brendan Sherman inform you in any way of  
 4 what he was going to be using the September 2nd letter  
 5 for other than letting you out of the contract?  
 6 A. He advised me that Dr. Abbesinio was in  
 7 violation of his contract with him. He didn't tell me he  
 8 was going to use my letter for anything.  
 9 Q. Did you mention, during your discussions after  
 10 August 25th, 2005, that he was anticipating filing a  
 11 lawsuit against Dr. Abbesinio?  
 12 A. He did mention that, yes.  
 13 Q. When did he mention that?  
 14 A. I would say the week before settlement, which  
 15 would have been September 2nd.  
 16 Q. The settlement was scheduled for September  
 17 1st. Would it have been before that?  
 18 A. Yes. It would have been about a few days  
 19 before September 1st.  
 20 Q. So, sometime at the end of August?  
 21 A. The end of August, yes.  
 22 Q. And what did he tell you he was going to do?  
 23 A. Well, he said that he is in violation of the,  
 24 you know, his assigning the lease -- his assigning the

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1 lease at the Basin Road Laundromat.  
 2 Q. So, just for clarification, Brendan Sherman  
 3 said that the landlord was in violation?  
 4 A. Yes.  
 5 Q. And then, at that point, he informed you that  
 6 he was going to sue him or did he not even get into those  
 7 kinds of details?  
 8 A. He didn't get into those details.  
 9 Q. But he made --  
 10 A. He made me aware that he was in violation.  
 11 Q. When did you find out that there was a  
 12 lawsuit?  
 13 A. When I got the subpoena.  
 14 Q. When was that?  
 15 A. That was about two weeks ago, I guess it was.  
 16 Q. So, that would be May of --  
 17 A. Maybe May 15th.  
 18 Q. 2006?  
 19 A. 2006.  
 20 Q. After September 1st or September 2nd --  
 21 MS. DIROCCO: May 5th.  
 22 BY MR. MATLUSKY:  
 23 Q. Just by way of clarification, May 5th, that's  
 24 the first time you became aware of --

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10 (Pages 34 to 37)

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- 1 A. The actual lawsuit, yes.
- 2 Q. Did you have any conversations with Brendan
- 3 Sherman after September 2nd, 2005?
- 4 A. No.
- 5 Q. And, at that point, you just went along your
- 6 way and just proceeded to buy another business?
- 7 A. As soon as I got my deposit back, I started
- 8 looking for a different business.
- 9 Q. Were you looking for that business during the
- 10 time that you had the Asset Purchase Agreement?
- 11 A. Absolutely not, no.
- 12 Q. How much did you buy that business for, the
- 13 baby merchandising business?
- 14 A. \$52,000.
- 15 Q. And when did you buy that?
- 16 A. I believe it was the end of September.
- 17 Q. Of 2005?
- 18 A. Of 2005.
- 19 Q. So, soon thereafter, you --
- 20 A. I started looking for a business right away
- 21 that had nothing to do with Laundromats or landlords or
- 22 anything like that.
- 23 Q. So, if Brendan Sherman came back to you or if
- 24 you became aware that this alleged underlying issue

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- 1 involving the lease was resolved between September 2nd
- 2 and the end of September, would there be any way that you
- 3 would have even considered getting back and purchasing
- 4 this Laundromat?
- 5 A. Absolutely not. I don't want anything to do
- 6 with Brendan Sherman and any of his businesses.
- 7 Q. And that goes back to what you had mentioned
- 8 earlier?
- 9 A. Yes, that he didn't represent himself as the
- 10 owner of the business, and I find that to be very
- 11 sketchy.
- 12 Q. I am going to just recess for one minute.
- 13 (Recess taken.)
- 14 THE WITNESS: I got the name of my
- 15 accountant, Dennis Snyder.
- 16 BY MR. MATLUSKY:
- 17 Q. Dennis Snyder?
- 18 A. Ycs.
- 19 Q. Do you know how you spell that?
- 20 A. S-n-y-d-e-r.
- 21 Q. And he is located in Greenville, you had
- 22 mentioned, somewhere?
- 23 A. Yes.
- 24 Q. Speaking of Mr. Snyder, did he have any input

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- 1 or direction after September 1st as to what you should do
- 2 to get out of the contract?
- 3 A. Yes. I took his advice to heart because I
- 4 feel like he is very smart, and everything he tells me, I
- 5 feel like it's right. He told me to try to get out of it
- 6 any way possible, and since the inspection didn't occur
- 7 and that didn't work, to get out of that contract, and he
- 8 misrepresented himself.
- 9 Q. As far as "he," you don't mean Dennis?
- 10 A. Brendan Sherman, since he -- since he
- 11 misrepresented himself --
- 12 Q. Dennis was aware about this representations
- 13 about who owned what?
- 14 A. Yes. And he said that it may not be anything
- 15 illegal that he did as far as misrepresenting himself as
- 16 the broker, not the owner, but just try to get out of it,
- 17 the contract.
- 18 Q. Just to be clear, would you have tried to get
- 19 out of the contract or tried to declare it null and void
- 20 or void out the agreement of sale, the Asset Purchase
- 21 Agreement, in any way if, prior to September 1st,
- 22 everything was okay with the landlord giving the
- 23 assignment, but you still had the knowledge that Brendan
- 24 Sherman was somehow involved in the business, would you

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- 1 still have tried to get out of buying the business?
- 2 A. Yes. I would have contacted an attorney to
- 3 try to get out of it. There was no way I was going to
- 4 buy that.
- 5 Q. Did Brendan Sherman specifically tell you to
- 6 put in the September 2nd, 2005, letter, which is labeled
- 7 Defendant's Exhibit 2, language in there dealing with the
- 8 lease assignment?
- 9 A. I copied that paragraph into the letter.
- 10 Q. Was that at Brendan Sherman's direction or
- 11 input or insight?
- 12 A. No. But, like I said, the reason for the
- 13 inspection wasn't good enough, and I said, Well, you
- 14 didn't get the assignment of the lease, and that was the
- 15 other contingency, so that's what I am going to write
- 16 down.
- 17 Q. So, the first time you wrote a letter to
- 18 Brendan Sherman trying to get out was involving the
- 19 contingency on September 1st?
- 20 A. Yes.
- 21 Q. Then you came back September 2nd and wrote
- 22 another letter?
- 23 A. For the other contingency, yes. If there
- 24 would have been a third one, I would have put that one



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11 (Pages 38 to 41)

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1 down, too.  
2 Q. If Mr. Sherman said that this September 2nd  
3 letter wasn't good enough, at that point, what would you  
4 have done?  
5 A. I would have contacted an attorney to get out  
6 of the contract.  
7 Q. And you would have said to the attorney what?  
8 A. That he misrepresented himself to me as the  
9 broker of the business and I didn't trust him to buy this  
10 business from him.  
11 Q. So, just to be clear, up until what point did  
12 you really not know of Brendan Sherman's true role in the  
13 whole picture of you attempting to purchase this  
14 Laundromat?  
15 A. I would say within five days of the  
16 settlement --  
17 Q. And the settlement date --  
18 A. -- date.  
19 Q. And the settlement date, by way of  
20 clarification?  
21 A. September 1st, 2005.  
22 Q. So, sometimes at the end of August?  
23 A. So the end of August, I spoke with  
24 Dr. Abbessinio, who advised me who Mr. Sherman was.

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1 Q. So, at that -- who initiated that particular  
2 phone call?  
3 A. I did.  
4 Q. To -- you called Dr. Abbessinio?  
5 A. About the assignment of the lease.  
6 Q. And, at that point, you were just, more or  
7 less, just questioning status or what was going on?  
8 A. Yes. I wanted to know what was taking so  
9 long, you know, what's the problem with the assigning the  
10 lease over to me? I was going to tell him that I had the  
11 money for it and -- and then he dropped the ball and told  
12 me that, so --  
13 Q. When you say, "He dropped the ball," that was  
14 Dr. Abbessinio dropping the fact that he knew Brendan  
15 Sherman was involved as the owner of the business of the  
16 Laundromat?  
17 A. That's right. Is that -- never mind.  
18 MS. DIROCCO: Go ahead.  
19 (Discussion off the record.)  
20 (The reporter read back as requested.)  
21 BY MR. MATLUSKY:  
22 Q. By way of clarification, Brendan Sherman did  
23 inform you that he would file a lawsuit against  
24 Dr. Abbessinio prior to the date of -- he would file a

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1 lawsuit against Dr. Abbessinio?  
2 A. I don't remember if he actually used the term  
3 "lawsuit." He said he was in violation of the contract,  
4 but I don't remember if he was going to sue him. I don't  
5 remember if he actually said that.  
6 Q. But he told you that prior to September 2nd,  
7 2005, Brendan Sherman told you that?  
8 A. Yes.  
9 MR. MATLUSKY: That's it.  
10 (The deposition was concluded at 10:18  
11 a.m.)  
12 -----  
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1 INDEX TO TESTIMONY  
2  
3 ROSEANN A. SESTITO PAGE  
4 Examination by Mr. Matluský 2  
5 -----  
6  
7 INDEX TO EXHIBITS  
8 PAGE  
9 Defendant's Deposition Exhibit No. 1 was 31  
10 marked for identification  
11 Defendant's Deposition Exhibit No. 2 was 31  
12 marked for identification  
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1 CERTIFICATE

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional  
5 Reporter and Notary Public, within and for the County and  
6 State aforesaid, do hereby certify that the foregoing  
7 deposition of ROSEANN A. SESTITO, was taken before me,  
8 pursuant to notice, at the time and place indicated; that  
9 said deponent was by me duly sworn to tell the truth, the  
10 whole truth, and nothing but the truth; that the  
11 testimony of said deponent was correctly recorded in  
12 machine shorthand by me and thereafter transcribed under  
13 my supervision with computer-aided transcription; that  
14 the deposition is a true record of the testimony given by  
15 the witness; and that I am neither of counsel nor kin to  
16 any party in said action, nor interested in the outcome  
17 thereof.

18 WITNESS my hand this 31st day of May A.D. 2006.  
19  
20

21 RENEE A. MEYERS

22 REGISTERED PROFESSIONAL REPORTER

23 CERTIFICATION NO. 106-RPR

24 (Expires January 31, 2008)

Corbett & Wilcox